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April 8, 1992

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Federal Communications Commission
Office of the Secretary

**Ms. Donna Searcy
Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554**

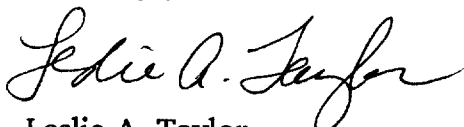
**Re: Request of Motorola Satellite Communications, Inc. for a Pioneer's Preference, ET
Docket No. 92-28, PP-32**

Dear Ms. Searcy:

Attached are an original and the required copies of the "Comments" of Loral Qualcomm Satellite Services, Inc. in the above-captioned matter.

Please contact the undersigned should you have any questions.

Sincerely yours,


Leslie A. Taylor

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Federal Communications Commission
Office of the Secretary

ET Docket No. 92-28
File No. PP-32

**Request for a Pioneer's
Preference with regard to
Its Application for Authority
To Construct IRIDIUM™, a
Low-Earth Orbit Satellite
Communications System**

¹ These entities, as well as the American Mobile Satellite Corporation (AMSC), have filed applications for authority to use part or all of these frequency bands and have filed related pioneer's preference and rulemaking proposals. AMSC has not filed a request for a pioneer's preference.

Proposing an Allocation for New Services, 6 FCC Rcd 3488 (1991), recon. in part, FCC 92-57, 47 C.F.R. § 1.402, released February 26, 1992. In addition, the Commission cannot grant Motorola a pioneer's preference because of the prejudicial effect such an award would have on the rulemaking and licensing proceedings related to the RDSS bands.

I. BACKGROUND

The Commission recently established a "pioneer's preference" for applicants proposing new radio services and/or new technologies enhancing existing services. The purpose of the preference is to encourage the development of innovative communications technology and spectrum usage. Id. at para. 1. In the Report and Order establishing the rules for the pioneer's preference, the Commission outlined three requirements.

First, the applicant must request a pioneer's preference for a proposal to introduce a new radio service, or to improve an existing service through new technology which significantly improves spectrum efficiency or enables sharing or co-use of allocated spectrum. 6 FCC Rcd at 3492, para. 37. "This standard can be met by developing new technology that is useful or necessary to the provision of a new radio-based service or that incorporates a significant enhancement or capability within an existing service." Request for Pioneer's Preference in Proceeding to Allocate Spectrum for Fixed and Mobile Satellite Services for Low-Earth Orbit Satellites, slip op. at 6, para.13 (FCC 91-21, released Feb. 11, 1992) ("Little LEO Tentative Decision").

Second, to effectuate the proposal, the applicant must file a rulemaking petition requesting either that spectrum be allocated for a new service or that the rules be amended to accommodate new technology. 6 FCC Rcd at 3492, para. 37; see also Memorandum Opinion and Order, slip op. at 7-8, para. 16-18 (FCC 92-57, released Feb. 26, 1992) ("Reconsideration Order").

Third, the applicant must establish, through experimentation or other means, that the proposal is technically feasible. 6 FCC Rcd at 3493, para. 39; see also Reconsideration Order, slip op. at 8, para. 17.

In determining whether to award a preference, the Commission stated that it will apply a flexible standard. The applicant must show that it "has developed an innovative proposal that leads to the establishment of a service not currently provided or a substantial enhancement of an existing service, provided, that the rules adopted for the new or existing service are a reasonable outgrowth of the proposal and lend themselves to the grant of a preference and a license to the pioneer." 6 FCC Rcd at 3494, para. 47.

In making its determination, the Commission stated that it will be guided by the objective of the pioneer's preference: "to reduce the risk and uncertainty innovating parties face in [the Commission's] existing rule making and licensing procedures, and therefore to encourage the development of new services and new technologies." Id. at 3492, at para. 32. In this way, the public interest will be served by fostering valuable new technologies and services. See Id. at 3490, para. 18.

As to the nature of the preference, the Commission specifically rejected the notion of providing a headstart in the provision of service to a designated pioneer. Id. at para. 32. The Commission determined that the pioneer preference should be "dispositive," that is, permit a "qualified innovating party" to receive a license. The Commission, however, stated that, "we do not intend to award a pioneer a nationwide monopoly on a service and thereby exclude others from providing that service." Id. at para. 19. The Commission further said it would not exclude "others who also wish to provide the service." Id. The Commission did provide for the possibility of a nationwide preference but also stated that its goals in creating the pioneer's preference must be balanced against its desire to encourage diversity in communications services, wherever possible. Id. at para. 54. Along that line, the Commission stated that multiple preferences might be granted in certain instances, and that the service might be modified as a "result of information developed in the proceeding." Id. at para. 55.

Based on its own rules, the Commission must deny the request of Motorola that it receive a pioneer's preference on the basis of the technology to be utilized in its proposed low-earth orbit satellite system, because (1) Motorola does not qualify for a pioneer's preference; (2) grant of a preference would be inconsistent with the Commission's policies expressed in the pioneer's preference proceeding and rules, as

well as other fundamental Commission policies; and (3) would unlawfully deprive LQSS and other applicants for licenses in the RDSS bands of their right to a comparative hearing. See, Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945).

II. MOTOROLA DOES NOT QUALIFY FOR A PIONEER'S PREFERENCE.

The Commission stated in its Report and Order establishing the pioneer's preference, that it did "not intend to bestow preferences casually," and it made clear that "an applicant for a pioneer's preference will have a significant burden to persuade the Commission that its proposal has sufficient merit." 6 FCC Rcd at 3494, para. 48. See also, VITA Tentative Decision, ET Docket No. 91-280, released February 11, 1992, slip op. at 6.

Although Motorola, as do the other RDSS applicants, proposes a change in operating and technical characteristics and promises new services, Motorola's proposal does not qualify for a pioneer's preference because:

(1) Motorola's request does not provide the required showing that a preference is deserved;

(2) the IRIDIUMTM system does not make efficient use of spectrum, provide for spectrum sharing or multiple entry;

(3) Motorola's proposal will not affect the speed or quality of information transfer;

(4) the IRIDIUMTM system will not result in reduced costs to the public²;

(5) Motorola has not demonstrated, through its application, or through the results of an experiment,³; that its system will work;

(5) the Motorola system contains major technical flaws; and

(6) the Motorola system does not involve innovation because Motorola did not develop LEO technology (used by the Department of Defense for many years),

² See 6 FCC Rcd at 3494.

³ "A preference applicant relying upon an experiment...at least must have commenced its experiment and reported to us its preliminary results in order to be eligible for a conditional preference." Reconsideration Order at 5.

intersatellite crosslinks (developed by NASA and used in connection with the TDRSS satellites), or bidirectional capabilities (used in radar and in military systems).

In addition, in light of its policies stated in establishing the preference system, the Commission should not confer a pioneer's preference on a party which admits that it can not share with either other low-earth orbit satellite systems, or with communications systems such as GLONASS or Radio Astronomy systems. See, Motorola Consolidated Response, January 31, 1992⁴.

Further, the Commission, in addition to requiring the above-discussed showings in requests for a pioneer's preference, requires that the applicant demonstrate the feasibility of the new service or technology, either in writing, or through the conduct of an experiment. See, Pioneer's Preference Order, 6 FCC Rcd at 3493 (para. 39). Motorola has not made the required demonstration in its application or through the conduct of an experiment.

III. GRANT OF A PIONEER'S PREFERENCE TO MOTOROLA IS INCONSISTENT WITH COMMISSION POLICIES.

Apart from innovativeness, the Commission identified certain other criteria which it will utilize to evaluate requests for pioneer's preference. These include added functionality, a different use of spectrum than previously available, a change in operating or technical characteristics of a service, efficient spectrum use, spectrum sharing, speed or quality of information transfer, and reduced costs to the public. Pioneer's Preference Order, 6 FCC Rcd at 3494 (para.48). As discussed above, Motorola's proposed system does not meet these criteria.

In addition, grant of a pioneer's preference to Motorola cannot be made because it would be inconsistent with Commission policies. More specifically, grant of a pioneer's preference to Motorola's proposed monopoly, non-sharing system would be improper

⁴ INMARSAT, in a document from the Director General to the INMARSAT Council dated March 9, 1992, stated the view that CDMA would be required in LEO MSS systems to ensure spectrum sharing. See, Council/42/19/ADD/1, INMARSAT Council, 42nd Session.

because (a) it would be inconsistent with the premises on which the pioneer's preference was founded (e.g., "to encourage diversity and competition in communications," 6 FCC Rcd at 3495 (para.54); Reconsideration Order (para. 24)); (b) it would insulate the preference holder from "fac[ing] competition from other service providers," Reconsideration Order (para. 8), which was not intended (Id.); (c) it would tend to "guarantee...a temporary service monopoly" which the Commission said was not "justified at this time," 6 FCC Rcd at 3492 (para.34); and (d) would be inconsistent with Ashbacker Radio Corp. v. FCC, 325 U.S. 326 (1945).

Moreover, the public interest, as the Commission has determined over the past 20 years, can best be served by multiple service providers and continuance of the FCC's long-standing open entry policy. In the case of Motorola's exclusive service proposal, grant of any pioneer's preference for its system would make a mockery of this policy. Moreover, as shown in numerous comments, Motorola's system is inefficient.⁵ Motorola's proposal can not therefore yield attainment of the Commission's goals, including better service to the public at lower costs, that result from open entry and competition. Motorola is ineligible for a pioneer's preference because its proposed system is the antithesis of a spectrally efficient system (utilizing not only 1616.5-1626.5 MHz on an exclusive basis but more than 200 MHz of spectrum in the 20/30 GHz bands) and because the fundamental basis of its proposal is inconsistent with the Commission's established policies of spectrum sharing, open entry and competitive provision of service to the benefit of the public.

IV. A GRANT OF A PIONEER'S PREFERENCE TO MOTOROLA WOULD UNLAWFULLY PREJUDICE THE INTERESTS OF OTHER APPLICANTS FOR THE RDSS BANDS

Apart from the deficiencies discussed above that make Motorola ineligible for a pioneer's preference, the Commission cannot confer a preference on Motorola because

⁵ See, LQSS Consolidated Opposition to Petitions to Deny filed January 31, 1992, and LQSS Consolidated Reply Comments filed March 27, 1992.

such action would unlawfully prejudice the interests of other applicants for the RDSS bands, including LQSS. In the case of a nationwide service, and in a situation involving mutually exclusive applications (mutually exclusive particularly because of Motorola's stated inability to share the 1610-1626.5 MHz band), grant of a pioneer's preference to an applicant proposing monopoly provision of service would be extremely prejudicial to all other applicants.

Any grant of a tentative or other preference to Motorola under these circumstances would be inconsistent with Ashbacker. Such a grant would also improperly and unduly influence the conduct of the rulemaking concerning the RDSS band, as well as the processing of the applications for its use.

The Commission's discussion of Ashbacker rights in the Report and Order establishing the pioneer's preference rules did not address the issue of whether the Commission can distinguish among applicants whose applications are already on file. The Commission, in its Report and Order, addressed only the circumstance where petitions for rulemaking and requests for preference have been filed, but not applications. In this proceeding, applications have been pending since November, 1990, with a cut-off date established for the filing of "mutually exclusive" applications by June 3, 1991. In the a proceeding where applications have been filed before the consideration of requests for pioneer's preference, once mutually exclusive applications have been accepted, those parties are entitled to full consideration under Ashbacker. Despite the Commission's efforts to analogize the designation of a pioneer to the establishment of a "threshold" standard, such action cannot be utilized to denigrate applicants' rights to comparative consideration. Cf., Pioneer's Preference Order, at para. 33.

Moreover, the Commission itself has recently expressed the view that, "[T]he issues in the licensing and rule making proceedings to a significant degree are analogous to the issues raised by their associated pioneer's preference requests..." Order Denying Extension of Time for Comments and Replies, ET Docket No. 92-28, (released March 27, 1992, at 2). Thus, the Commission has stated that the pioneer's preference, licensing and rule making proceedings address, "the same or similar issues," Id., para.4. The argument cannot be made therefore that the proceedings are segregable on a factual,

preference proceeding could affect the rights of parties in the rulemaking and licensing proceedings because the proceedings are inextricably intertwined.

V. CONCLUSION

For the reasons stated above, Motorola's request for pioneer's preference must be denied. Moreover, the Commission cannot, in the guise of granting a pioneer's preference, take any action which would violate the rights of all parties to fair consideration of their rulemaking petitions and license requests, and which could result in denial to the public of the benefits of competition in the provision of important new telecommunications services.

Respectfully submitted,

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April 8, 1992

CERTIFICATE OF SERVICE

I, Andrew Taylor, hereby certify that I have on this 8th day of April, 1992, caused to be sent copies of the foregoing "Opposition to Motorola's Request for Pioneer's Preference" by U.S. mail, postage prepaid, to the following:

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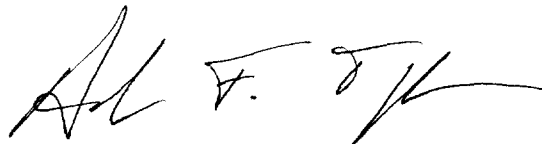
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A handwritten signature in black ink, appearing to read "A. F. Taylor", written over a horizontal line.

Andrew F. Taylor